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COURT OF APPEAL, FOURTH APPELLATE DISTRICT

DIVISION ONE

STATE OF CALIFORNIA

THE PEOPLE,

Plaintiff and Respondent,

v.

JOSEPH ROBINSON,

Defendant and Appellant.

D060270

(Super. Ct. No. SCN288766)

APPEAL from a judgment of the Superior Court of San Diego County, Steven E. Stone and Daniel B. Goldstein, Judges. Affirmed.

Joseph Robinson was convicted of reckless driving in violation of Vehicle Code section 2800.2, subdivision (a). He was sentenced to two years in state prison, and, among other conditions, was ordered to pay \$154 in administrative booking fees.

Robinson now appeals, claiming the trial court abused its discretion in ordering him to pay the booking fee without finding sufficient evidence of Robinson's ability to pay. We conclude Robinson's claim was forfeited, and in any event is meritless.

BACKGROUND

Robinson was arrested March 2, 2011, after San Diego Deputy Sheriff Shawn Silva observed him running a red light. A high-speed chase ensued, during which Robinson crashed his car into a wall, was ejected from the vehicle, and unsuccessfully attempted to run from Deputy Silva.

On June 2, 2011, a jury convicted Robinson of reckless driving. At sentencing, the trial court sent Robinson to prison and imposed several fees, including the \$154 booking fee pursuant to Government Code¹ section 29550.² The court also ordered Robinson to pay restitution, and scheduled a restitution hearing at Robinson's request. At sentencing Robinson did not object to the administrative booking fee.

DISCUSSION

Generally, only issues properly objected to and preserved below may be reviewed on appeal. (*People v. Scott* (1994) 9 Cal.4th 331, 351; *People v. Smith* (2001) 24 Cal.4th 849, 852.) Our courts have routinely held the waiver rules to apply to fines imposed without findings or evidence of ability to pay. (*People v. Valtakis* (2003) 105 Cal.App.4th 1066, 1072.) Parties may not "stand silent as the court imposes a fee . . . and then complain for the first time on appeal that some aspect of the statutory procedure was not followed[.]" (*Id.* at p. 1075.)

¹ All further statutory references are to the Government Code.

² We note the pronouncement of judgment form only contains reference to section 29550.1, which is in error.

To support his argument against forfeiture, Robinson cites *People v. Viray* (2005) 134 Cal.App.4th 1186 (*Viray*), which held that claims based on insufficient evidence of ability to pay appointed counsel fees cannot be forfeited. However, *Viray* is an exception to the general rule discussed above, premised on the proposition that a clear conflict of interest arises when an attorney fails "to object to an order reimbursing his own fees." (*Id.* at p. 1214.) The *Viray* court explained that such a situation left a defendant "effectively *unrepresented*." (*Ibid.*)

Here, no such conflict exists. Robinson's booking fee will reimburse the county, not his attorney or the public defender's office. Thus, Robinson's argument is subject to the normal forfeiture rules outlined above, and his failure to preserve the matter in trial court procedurally bars it from appellate review.

Were we to entertain Robinson's argument, however, it would still fail. Sections 29550, 29550.1 and 29550.2 govern fees for booking or processing arrestees into a county jail. The applicable code section depends on the arresting agency. In Robinson's case, he was arrested by a county sheriff, which renders his booking fee subject to section 29550, subdivisions (c) and (d). Subdivision (c) authorizes a county to recover the administrative costs of arresting a person convicted of any criminal offense related to the arrest. Subdivision (d), meanwhile, is split into two parts. Subdivision (d)(1) provides: "A judgment of conviction may impose an order for payment of the amount of the criminal justice administration fee by the convicted person, and execution may be issued

on the order in the same manner as a judgment in a civil action, but shall not be enforceable by contempt."

Subdivision (d)(2) provides: "The court shall, as a condition of probation, order the convicted person, based on his or her ability to pay, to reimburse the county for the criminal justice administration fee, including applicable overhead costs."

Subdivision (d)(2), which contains explicit language basing the booking fee on the defendant's ability to pay, applies to conditions of probation. Subdivision (d)(1) lacks inclusion of an explicit ability to pay determination, but covers "convictions" rather than "probation." This omission reflects legislative intent to tie such a determination to a probation grant, while refusing to require it for other post-conviction dispositions.

" 'Where a statute, with reference to one subject contains a given provision, the omission of such provision from a similar statute concerning a related subject [in this case, the *same* subject] is significant to show that a different intention existed.' " (*People v. Valentine* (1946) 28 Cal.2d 121, 142.) We conclude where, as here, the defendant was sentenced to state prison rather than probation, no determination of his ability to pay the fee was necessary.

The judgment is affirmed.

BENKE, J.

WE CONCUR:

McCONNELL, P. J.

HUFFMAN, J.